

Dorman, April@Wildlife

From: Xiong, Mary@Wildlife
Sent: Wednesday, June 15, 2022 5:05 PM
To: wjow@yubacity.net
Cc: Wildlife R2 CEQA; Boyd, Ian@Wildlife; Barker, Kelley@Wildlife; Thomas, Kevin@Wildlife
Subject: CDFW's Comments on the IS/MND for the Second Groundwater Well Installation Project (SCH No. 2022050477)

Follow Up Flag: Follow up
Flag Status: Flagged

Governor's Office of Planning & Research

Jun 16 2022

STATE CLEARINGHOUSE

Dear Mr. Jow,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from the City of Yuba City (City) for the Groundwater Well Installation Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code., § 1802.) Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. To the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The proposed Project involves the construction of a 500-foot-deep groundwater well within the City in eastern Sutter County, California. The Project site is located at the Water Treatment Plant (WTP) at the corner of Northgate Drive and Live Oak Boulevard, specifically addressed as 701 Northgate Drive within the Assessor's Parcel Number 51-020-009. The new groundwater well will be located in the same vicinity as an existing groundwater well at the City's WTP site. The City will investigate and determine the best location for the proposed well based on groundwater, geotechnical, and geological conditions at the site. The new well will be cased in stainless steel and be connected to the WTP by a subsurface pipeline; this will require excavation of a 3-foot-wide trench anticipated to be no more than 10 feet deep. The precise route of the trench will be determined by the final siting of the new well. For the purposes of the proposed Project, the Project area will consist of the entire approximate 24.7-acre WTP site.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Worker Environmental Awareness Program (WEAP) training

CDFW recommends a qualified biologist provide a WEAP training for all construction personnel before any construction activities begin. At a minimum, the training should include a description and discussion of the mitigation measures within the IS/MND and a brief description of each species that have a potential to occur on the Project according to Table 3-9 of the IS/MND, including a discussion of identification, habitat, and legal protections.

Nesting Bird Surveys and Protection

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA).

The IS/MND mitigation measure BIO-1b (Pre-Construction Nesting Bird Survey) requires pre-construction nesting bird surveys of suitable habitats in the Project area within 14 days prior to the commencement of Project construction if construction is scheduled during the nesting season (February 1 to August 31) and that the survey area shall include the Project footprint and a 300-foot radius for raptors and a 100-foot radius for other birds protected under the MBTA.

Please note that bird species can construct nests and begin laying eggs in less than 14 days, and a pre-construction nesting bird survey scheduled within 14 days prior to construction may therefore miss some instances of nesting. Many bird species may initiate nest-building and begin laying eggs very rapidly, and some bird species may construct a nest in as few as two or three days (Shaffer, 2021). To minimize the chances of missing nests, CDFW recommends scheduling the survey within three (3) days before the start of ground disturbing activities. In addition, Fish and Game Code protections for nesting and migratory birds apply regardless of the time of year, and some bird species may nest during the winter and fall months. If an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

The IS/MND mitigation measure BIO-1c (Establish Nest Buffers) requires that on discovery of any active nests near work areas, the biologist shall determine appropriate construction setback distances based on applicable CDFW and/or U.S. Fish and Wildlife Service guidelines and/or the biology of the species in question.

CDFW recommends including performance-based protection measures for avoiding all nests protected under the MBTA and Fish & G. Code and is available to provide comments and feedback on nesting bird avoidance strategies, as necessary. A buffer may need to be increased based on the birds' tolerance level to the disturbance. The following is an example of a performance-based protection measure: Should construction activities cause the nesting migratory bird or raptor to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, the exclusionary buffer should be increased such that activities are far enough from the nest to stop this agitated behavior by the migratory bird or raptor. The exclusionary buffer should remain in place until the chicks have fledged or as otherwise determined by a qualified biologist.

Burrowing Owl (*Athene Cunicularia*)

Section 15126.4 (a)(1)(B) of the CEQA guidelines states that formulation of mitigation measures should not be deferred until some future time. As written, the following measures (Mitigation Measures BIO-2c and BIO-2d) rely on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance. Because there is no guarantee that these approvals or cooperation with all the involved entities will ultimately occur, the mitigation measures are unenforceable and do not explain how the impacts to biological resources would be reduced to a less than significant level.

The IS/MND mitigation measure BIO-2c states (Establish Avoidance Radius) that if an active, occupied burrow is discovered within 656 feet of the Project footprint, the City and CDFW will be notified and an avoidance radius will be established and fenced around the occupied burrow, in consultation with the City and CDFW.

CDFW recommends that if an active burrow is discovered within 656 feet of the Project footprint, an avoidance radius should be implemented following the recommendations in the CDFW Staff Report on Burrowing Owl Mitigation (CDFW, 2012) as well as including performance-based protection measures. A buffer may need to be increased based on the birds' tolerance level to the disturbance. Active burrows should be monitored by a qualified biologist throughout the construction phase to determine the effectiveness of buffers, visual screens, or other measures, and to determine if vehicle traffic is jeopardizing an active nest. CDFW is available to assist with the development of potential measures to offset impacts if desired.

The IS/MND mitigation measure BIO-2d (Prepare Relocation Plan) requires that if avoidance of the occupied burrow is not feasible, a passive relocation plan shall be prepared in consultation with the City and CDFW and that the passive relocation plan will be implemented only upon City and CDFW approval.

CDFW recommends that if avoidance of the occupied burrow is not feasible, the IS/MND should propose mitigation measures that establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. CDFW recommends that the passive relocation plan be implemented following the passive relocation recommendations in the CDFW Staff Report on Burrowing Owl Mitigation (CDFW, 1995).

Swainson's Hawk (*Buteo Swainsoni*)

The IS/MND mitigation measure BIO-3a (Pre-Construction Swainson's Hawk Survey) requires that if Project construction is anticipated to commence during the Swainson's hawk nesting season (March 1 through September 15), a qualified biologist shall conduct a pre-construction survey within 0.25 miles of the Project footprint in accordance with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, 2000).

A single survey may not be adequate to identify and avoid Swainson's hawk nests. Furthermore, the timing of the survey may preclude identification of nests. Swainson's hawks are migratory and return to their breeding grounds in early March to April. They generally lay their eggs in early April to early May (CDFW, 1994). A pre-construction survey timed early in the nesting season may fail to identify Swainson's hawk nests simply because the hawks have not arrived yet. With a delay between the survey and the start of construction, a pair of Swainson's hawks may arrive and begin nesting between the survey date and the start of construction. Additionally, nests are often extremely difficult to locate while eggs are being laid and incubated and while newly hatched chicks are present because the parents avoid drawing attention to the nest site. CDFW recommends that the mitigation measure BIO-3a be revised to require multiple surveys conducted in different periods of the nesting season as described in the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, 2000) to adequately identify and avoid Swainson's hawk nests.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources

Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEE

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Please direct written notifications to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the IS/MND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Mary Xiong, Senior Environmental Scientist (Specialist) at (916) 212-3876 or mary.xiong@wildlife.ca.gov.

Sincerely,

Mary Xiong

Senior Environmental Scientist (Specialist)
Habitat Conservation Program
California Department of Fish and Wildlife – North Central Region
Cell: (916) 212-3876

REFERENCES

California Department of Fish and Wildlife (CDFW). 1994. Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

California Department of Fish and Wildlife (CDFW). 1995. Staff report on Burrowing Owl Mitigation. October 17, 1995.

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California Department of Fish and Wildlife (CDFW). 2012. Staff report on Burrowing Owl Mitigation. March 7, 2012.

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Shaffer, J.A., Igl, L.D., Johnson, D.H., Sondreal, M.L., Goldade, C.M., Parkin, B.D., and Euliss, B.R., 2021, The effects of management practices on grassland birds—Lark Sparrow (*Chondestes grammacus*), chap. DD of Johnson, D.H., Igl, L.D., Shaffer, J.A., and DeLong, J.P., eds., The effects of management practices on grassland birds: U.S. Geological Survey Professional Paper 1842, 21 p., <https://doi.org/10.3133/pp1842DD>

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>